

# State's Responsibility in Regulating Business Corporations for Human Rights Violations: A Critical Analysis with Reference to Sri Lankan Constitutional Law

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## ABSTRACT

This analysis examines the State's obligation in regulating businesses that violate human rights, with critical focus on Sri Lankan constitutional law. The recognition of human rights violations by business entities has gained broad recognition under international law following World War II and the adoption of the Universal Declaration of Human Rights (UDHR). While businesses significantly impact human rights both positively and negatively, international treaties do not place direct obligations on companies. Instead, States enforce national laws requiring companies to respect human rights, though debate continues about corporate responsibility in this area.

The United Nations Guiding Principles on Business and Human Rights (UNGPs), created by John Ruggie, outline the duties of governments and businesses in economic activity and provide relief for those affected.<sup>1</sup> These principles were established following extensive studies and consultations with global stakeholders and were endorsed by the United Nations Human Rights Council in 2011, further defining the roles of governments and businesses in addressing trade's impact on human rights.

In Sri Lanka, Business and Human Rights laws have been considered under constitutional law, specialized legislation and judicial activism under the Public Trust Doctrine. The Sri Lankan government made significant progress in October 2022 by adding the "Right to Life" provision to the Constitution through the 22nd Amendment.<sup>2</sup> However, the implementation occurred during Sri Lanka's economic crisis, limiting its development and appreciation.

## INTRODUCTION

### The Importance of State Responsibility

### Why State Responsibility in Governing Business Corporations is Critical

Business and Human Rights (BHRs) have proliferated over the past twenty years. Since the mid-1990s, numerous companies have questioned the consequences of human rights on their operations, seeking solutions to challenges in competitive economic environments.<sup>3</sup> Most companies create opportunities for employees, helping meet the right to adequate work and satisfactory life. Business contributions to state revenues through taxation support general government activities including health, education and housing all promoting human rights fulfillment.<sup>4</sup>

<sup>1</sup> John Ruggie, "Protect, Respect and Remedy A Framework for Business and Human Rights Report of the Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises", 2008, A/HRC/8/5

<sup>2</sup> 22nd Amendment to the Constitution, AN ACT TO AMEND THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

<sup>3</sup> Baumann-Pauly, Dorothee, and Justine Nolan. *Business and Human Rights: From Principles to Practice*, Taylor & Francis Group, 2016

<sup>4</sup> Claire Methven O'Brien, *Business and Human Rights - A Handbook for Legal Practitioners* (Council of Europe 2019), 11

However, certain business practices can harm employees through trafficked labor, worker discrimination, privacy invasion or harmful environmental contaminants. Awareness of these violations arising from company activities is crucial.<sup>5</sup> The obligations of state to regulate such activities, particularly those violating human rights becomes essential. This analysis examines how the State has contributed to regulating corporations that violate human rights when their operations harm the environment and right to life of people and whether current law is adequate under Sri Lankan constitutional and environmental legislation.

The Universal Declaration of Human Rights (UDHR), one of the century's most important political legacies, serves as the benchmark for achieving Business Human Rights and has been ratified by Sri Lanka.<sup>6</sup> The Sri Lankan Supreme Court has recognized the persuasive value of international instruments, as held by Amarasinghe J that "International human rights instruments proved important guidance in cases concerning fundamental rights and freedoms."<sup>7</sup>

Sri Lanka currently faces a financial crisis and crucial domestic political juncture underscoring the importance of upholding human rights. The country has experienced some of the world's most enduring ethnic civil war and violence.<sup>8</sup> Environmental challenges including pollution and soil and water contamination require attention, as companies ignoring restrictions violate environmental concerns and domestic workers' rights seeking overseas employment.

## Structure and Objectives

This analysis covers several key areas: understanding the global framework of Business and Human Rights; examining BHRs scope in Sri Lanka; identifying gaps in provisions addressing state duty regarding human rights violations by businesses affecting citizens' right to life in the existing fundamental rights chapter under the 1978 Constitution; analyzing how the State has established BHRs law under the Public Trust Doctrine; investigating how Sri Lankan courts have interpreted the right to life under BHRs and environmental law through judicial activism; and assessing whether judicial activism mechanisms sufficiently safeguard the right to life when businesses violate rights in their operations.

The main objective is showcasing how judicial activism can help address gaps in Constitutional Provisions where businesses violate rights. The analysis centers on Sri Lanka's obligation to uphold and promote human rights, especially when businesses disregard them through judicial activism or state intervention, examining whether state steps are sufficient to regulate business human rights violations.

## International Legal Framework

### The Relationship Between Business and Human Rights

#### International Human Rights Framework

Understanding the international human rights framework and state accountability for preservation is critical. Positive obligations compel states to safeguard citizens from violations committed by non-state actors and corporations.<sup>9</sup> Legislation has dual nature, defining duty-holders and their duties, including national parties' duties in international treaties.<sup>10</sup> The European Convention of Human Rights (ECHR) defines international human rights law obligations of governments, with states also obligated by customary international law norms from the UDHR.<sup>11</sup>

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<sup>5</sup> Ibid

<sup>6</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (II)

<sup>7</sup> *Sunila Abeysekera v Ariya Rubasinghe and Anuruddha Ratwatte and others SC Application No 9994/99*

<sup>8</sup> Amita Shastri, 'Ending Ethnic Civil War: The Peace Process in Sri Lanka' (2009) 47 *Commonwealth & Comparative Politics*, 76-99

<sup>9</sup> O'Brien, *Handbook*, 15

<sup>10</sup> Dinah Shelton, Ariel Gould (ed), *The Oxford Handbook of International Human Rights Law* (First edition, Oxford University Press 2013) ch 24, 562-584

<sup>11</sup> O'Brien, *Handbook*, 16

The ECHR mandates signatories ensure everyone's liberties and freedom, including both negative and positive obligations.<sup>12</sup> State duties under these documents fall into three categories: "respect," "protect," and "fulfill" human rights.<sup>13</sup>

### Legal Basis for Business Human Rights Protection

Business corporations significantly impact people in employment, human rights, and labor conditions. The connection between human rights and business is illustrated through cases like the Netherlands restaurant owners found guilty of human trafficking, where victims faced restricted movement and financial control.<sup>14</sup> This raises questions about whether banks responsible for transactions could be held accountable for preventing or mitigating negative human rights consequences from commercial relationships.

### State Duty to Protect

This framework discusses legal duties states must fulfill to protect against and prevent business-related human rights abuses internationally. It defines nation-state duties in international human rights treaties, such as free expression rights and state responsibility to respect and ensure individuals can enjoy declared protections. State responsibilities encompass both positive and negative aspects: negative responsibilities impose duties to refrain from interfering with right enjoyment and defend against third-party violations, while positive responsibilities require states to take action safeguarding human rights.<sup>15</sup>

### Positive Obligations

Under international law categorization, "Negative Obligations" require states ensure their acts and those of organs and agents don't obstruct specified human rights exercise. "Positive Obligations" bind states to safeguard or prevent actions stopping third parties from violating human rights. States may need to intervene preserving human rights under the ECHR "even in the sphere of relations of individuals among themselves."<sup>16</sup>

Positive Obligations protect rights holders from infringement by persons, including companies. In Business and Human Rights contexts, states must implement suitable and reasonable measures controlling private companies whose operations may infringe on ECHR-guaranteed human rights.<sup>17</sup> The European Court of Human Rights (ECtHR) found that freedom of association protects employers' participation in labor law and recognized positive responsibilities' validity safeguarding against human rights violations regarding the right to life.<sup>18</sup>

### United Nations Guiding Principles and Council of Europe Recommendations

The UNGPs comprise 31 principles based on three-pillar structure addressing BHR basics:<sup>19</sup>

**Pillar 1:** State duty to protect rights-holders against business abuses

**Pillar 2:** Business responsibility to respect human rights

**Pillar 3:** Victims' right to access adequate remedy for business-related human rights abuses

The Council of Europe adopted a Declaration and Recommendation on Human Rights and Business supporting and giving additional meaning to UNGPs, ECHR, and other human rights standards.<sup>20</sup> The Recommendation

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<sup>12</sup> Shelton, *Oxford Handbook*

<sup>13</sup> O'Brien, *Handbook*, 16

<sup>14</sup> Maria Anne Van Dijk, Marijn De Haas and Ruben Zandvliet, 'Banks and Human Trafficking: Rethinking Human Rights Due Diligence' (2018) 3 *Business and Human Rights Journal* 105

<sup>15</sup> Shelton, *Oxford Handbook*

<sup>16</sup> *X and Y v. The Netherlands*, 1985

<sup>17</sup> *Storck v Germany*, 16 June 2005

<sup>18</sup> *Wilson, the National Union of Journalists and Others v. the United Kingdom*, 2 July 2002

<sup>19</sup> UN, 'frequently asked questions about the guiding principles on business and human rights'

emphasizes regular analysis and evaluation of national legislation for conformity, including COE member states' guidelines for implementing UNGPs and special safeguards for workers, children, indigenous peoples, and human rights activists.

### UNGP Pillar I - State Duty to Protect Human Rights

UNGPs foundational concept indicates states must safeguard against abuse by third parties, including businesses, within their territory.<sup>21</sup> Implementation requires effective policies, legislation, regulations, and adjudication to prevent, investigate, punish, and redress abuse. Failure to fulfill this duty could result in international law breaches.<sup>22</sup>

States must protect and advance rule of law values in legal and procedural concerns, ensuring equality, impartiality, accountability, legal definiteness, and openness.<sup>23</sup> International treaties mandate state prevention and effective methods, leading to legislation and judicial progress in human rights aspects in business, particularly the right to life. The European Court of Justice stated in *Tătar v. Romania* that pollution from cyanide leaching from gold mines could constitute infringement on private and family life rights because it endangers individual health.<sup>24</sup>

### UNGP Pillar II - Corporate Responsibility to Respect Human Rights

The second "Pillar" of UNGPs 11-24 expounds the "corporate responsibility to respect."<sup>25</sup> Although UNGPs identify business responsibility for respecting as social expectation rather than legal obligation, it has roots in international law.<sup>26</sup> Generally, human rights accords identify states as obligation bearers, not private entities like businesses.

When considered under UNGPs, businesses are responsible for respecting human rights by complying with national regulations and safeguarding individual rights. Failure exposes corporations to public opinion, including workers, communities, customers, civil society, and investors. Societal expectations define broader duty to respect human rights as part of company social license to operate.<sup>27</sup>

### Due Diligence

States and businesses implement legislation and policy measures promoting corporate human rights due diligence nationally, regionally, and globally. This process involves businesses detecting, avoiding, mitigating, and accounting for potential human rights consequences.<sup>28</sup> The procedure consists of four stages: human rights risk and impact assessment, integrating findings and taking appropriate action, monitoring effectiveness of company responses, and communicating and reporting.<sup>29</sup>

Some European countries implemented laws like the Modern Slavery Act of 2015, mandating UK commercial organizations compile slavery and human trafficking statements and report on prevention measures in companies or supply chains.<sup>30</sup>

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<sup>20</sup> Council of Europe, Human Rights and business -- Recommendation CM/Rec (2016)3 of the Committee of Ministers to Member States (2016)

<sup>21</sup> UNGPs, Foundational Principle

<sup>22</sup> O'Brien, *Handbook*, 25

<sup>23</sup> UNGPs, 2, B, 3

<sup>24</sup> *Tătar v. Romania*. 6 July 2009

<sup>25</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc A/HRC/17/31, 21 March 2011

<sup>26</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc A/HRC/17/31, 21 March 2011

<sup>27</sup> UN, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie 'PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT' A/HRC/8/5 7 April 2008

<sup>28</sup> UNGPs, 15 and 17

<sup>29</sup> O'Brien, *Handbook*, 83

<sup>30</sup> O'Brien, *Handbook*, 91

## UNGP Pillar III - Access to Remedy

States are generally not legally liable for non-state actors' actions, but in international law, states can be held liable if they induced crime commission, granted permission, or failed to prevent, punish, or compensate victims.<sup>31</sup> The right to remedy is a key principle in international human rights systems and is recognized in UNGPs, ensuring victims have access to effective remedies through state-based judicial mechanisms, state-based non-judicial mechanisms, and non-state based non-judicial mechanisms.<sup>32</sup>

### Sri Lankan Constitutional Framework

#### Human Rights Violations by Businesses in Sri Lankan Constitution

In Sri Lanka, Fundamental Rights outlined in Chapter III of the constitution are rooted in the UDHR.<sup>33</sup> Articles 3 and 4 establish that the right to vote and other essential rights belong to people's sovereignty and cannot be revoked.<sup>34</sup> Article 4(d) mandates all government institutions respect, protect, and promote these rights without limiting or denying them.<sup>35</sup>

Individuals can apply to the Supreme Court if their fundamental rights, including equality provisions, have been violated due to executive or administrative actions.<sup>36</sup> The Supreme Court has extensive discretion determining appropriate relief and has made use of wide jurisdiction conferred by Articles 126(1) and 126(4) to entertain applications and grant redress by applying Public Trust Doctrine.<sup>37</sup>

However, Sri Lanka's Second Republican Constitution drafters in 1978 gave insufficient consideration to the fundamental right to life. Consequently, the Sri Lankan Supreme Court interpreted the "Right to Life" using Articles 11 and 13(4) of the Constitution.<sup>38</sup> The former contends taking someone's life without court order is wrong, while the latter suggests any harassment, physical or mental, endangers a person's right to live in peace.

The right to life was established positively in *Sriyani Silva v. Iddamalgoda* by Justice Bandaranayake, where it was stated negatively in the Constitution by proclaiming no one can take another's life without legitimate authority under Article 13(4).<sup>39</sup> Courts, through judicial activism, have secured minimum rights for people, advancing this approach by stating the Constitution is a "living document" that should not be "narrowly and pedantically" construed.<sup>40</sup>

#### Legal Framework Governing Right to Life Under BHR

Courts have added new rights to constitutions, including environmental and fundamental rights. Business and human rights are crucial when companies harm the environment and violate citizens' right to life. BHR, environmental rights, and sustainable development should be legally recognized, especially constitutionally.

Chapter III of Sri Lanka's Constitution does not adequately recognize the right to clean, healthy environment or right to life. Therefore, if someone wishes to invoke Supreme Court jurisdiction over fundamental rights, they cannot assert violation claims for fundamental environmental rights without necessary connection to other constitutionally recognized fundamental rights.<sup>41</sup>

<sup>31</sup> O'Brien, *Handbook*, 99-100

<sup>32</sup> UNGPs, 26, 27, 28, 30, 31

<sup>33</sup> Sri Lanka Constitution 1978

<sup>34</sup> Sri Lanka Constitution 1978, Article 3

<sup>35</sup> Sri Lanka Constitution 1978, Article 4(d)

<sup>36</sup> Sri Lanka Constitution 1978, Article 17

<sup>37</sup> Sri Lanka Constitution 1978, Articles 126(1) and 126(4)

<sup>38</sup> Sri Lanka Constitution 1978, Articles 11 and 13(4)

<sup>39</sup> *Sriyani Silva v Iddamalgoda, OIC, Police Station Paiyagala and Others* [2003] 2 Sri L.R. 63

<sup>40</sup> Samangi Himasha Abeyrathne, 'Fight for Right to Clean and Healthy Environment in the Judicial Context of Sri Lanka with an International Perspective' [2021] SSRN Electronic Journal 4

<sup>41</sup> Abeyrathne, 'Fight for Right to Clean and Healthy Environment', 4



Sri Lanka's Constitution mandates the State and individuals conserve the environment, with Article 27 stating the State must maintain, preserve, and develop it for community benefit, while Article 28 outlines everyone's responsibility for nature conservation.<sup>42</sup> The Constitution does not explicitly provide citizens right to healthy environment, necessitating judicial action defending ecological rights.

The 22nd amendment to the Sri Lankan Constitution, implemented in October 2022, recognized the right to life and personal liberty as fundamental rights, as defined in Article 12(1)(a).<sup>43</sup> However, implementation occurred during Sri Lanka's economic crisis, limiting development and appreciation.

### **Law Applying to Businesses in Sri Lanka**

The corporate sector, including agriculture, manufacturing, construction, petroleum, garments, and textiles, is crucial for economic growth but generates significant environmental damage. Sustainability has become prominent in business strategy, prioritizing people, planet, and profit.<sup>44</sup>

Sri Lanka's Companies Act from 2007 doesn't acknowledge environmental responsibilities, despite corporations having responsibility to act socially and address environmental concerns.<sup>45</sup> The Companies Act does not require businesses to disclose positive and negative environmental impacts through yearly reporting. Sections 150-153 require businesses prepare financial statements, with defaulting directors facing criminal charges.<sup>46</sup>

The Code of Best Practice on Corporate Governance, developed by the Securities and Exchange Commission and Institute of Chartered Accountants of Sri Lanka, provides foundation for environmental responsibility.<sup>47</sup> It requires directors include criteria such as adherence to best practices, financial, operational, and risk management practices, and management discussion on social and environmental protection initiatives.

Sri Lankan large-scale companies like Hayley's Group, MAS, and Unilever prioritize Corporate Social Responsibility (CSR) to protect the environment, promote economic and societal growth, and prevent adverse environmental consequences.<sup>48</sup> CSR involves businesses playing constructive community roles and considering environmental and social impacts, directly relating to sustainability creating economic, social, and environmental value.

### **Public Trust Doctrine and State Responsibility**

#### **Connection Between BHR and Sustainable Development**

Businesses sometimes ignore human rights, leading to legal action and lawsuits. Sri Lanka's Public Trust Doctrine (PTD) promotes sustainable development by prioritizing human rights and economic prosperity. However, Business and Human Rights is not well-known, with courts relying on various concepts to interpret and enforce related laws.<sup>49</sup>

The legal system in Sri Lanka combines Roman-Dutch and English law, with the Public Trust Doctrine emphasizing government responsibility to protect natural resources for public benefit. This chapter focuses on PTD evolution and implementation, examining judiciary intervention in safeguarding individuals' fundamental rights against profit-oriented corporate entities.

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<sup>42</sup> Sri Lanka Constitution 1978, Articles 27 and 28

<sup>43</sup> 22nd Amendment to the Constitution, Article 12(1)(a)

<sup>44</sup> Malsha Samarasinghe, "Corporate Accountability towards the Environmental Protection: A Comparative Analysis of Sri Lanka and United Kingdom", Volume 03, Issue 1, March 2023, 112-113

<sup>45</sup> Samarasinghe, "Corporate Accountability", 113

<sup>46</sup> Company Act No 07 of 2007, Sections 150-153

<sup>47</sup> Code of Best Practice on Corporate Governance clause D.1.4

<sup>48</sup> Samarasinghe, "Corporate Accountability", 118

<sup>49</sup> Rajitha Perera, The "Public Trust" Doctrine' [2016] SSRN Electronic Journal 1-21

## Public Trust Doctrine Origins and Development

The PTD emphasizes state fiduciary responsibility to subjects, ensuring public use of state resources.<sup>50</sup> It originated in Sri Lanka from 247-207 BC when Arahata Mahinda preached Buddhism to King Devanampiya Tissa, who established sanctuaries for wild creature preservation. The message emphasized the right to life for even birds and creatures: "O great King, the birds of the air and the beasts have as equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou art only the guardian of it."<sup>51</sup>

Despite no constitutional provision or statute explicitly referring to PTD, the Supreme Court implemented it in cases where discretionary authority misuse by government led to environmental and national resource exploitation and misuse through activism.<sup>51</sup>

## Supreme Court Implementation of PTD

The Supreme Court delivered landmark PTD decisions in *Bulankulama v. Ministry of Industrial Development*, the 'Eppawala Case,' challenging the proposed agreement between Government and Freeport MacMoran of the USA for phosphate exploration and mining.<sup>52</sup> The Court dismissed government arguments about responsibility for Sri Lanka's natural assets, with Amarasinghe J. emphasizing government obligations to protect natural resources, relating this duty to Articles 3 and 4 of the Constitution dealing with people's sovereignty.<sup>53</sup>

The Supreme Court held that the state holds people's natural resources in trust and that state organs are guardians committed to resource care and preservation. Amarsinghe J expanded PTD concepts from the USA and established 'shared responsibility' concepts, emphasizing the environmental legal principle of 'Polluter Pays Principle,' stating polluters are responsible for inflicting environmental harm.<sup>54</sup>

## Case Studies: Rathupaswala Water Crisis

The state's importance in safeguarding commercial human rights becomes apparent in the landmark *Rathupaswala* case when businesses fail to comply with set norms, particularly when breaches negatively impact society and individuals' health rights.<sup>55</sup> The "Rathupaswala Water Crisis" demonstrates urgent need for comprehensive law in this sector in Sri Lanka.

Sri Lankan rubber hand glove manufacturer Venigros (Pvt) Ltd faced conflict over industrial operation in residential areas, exceeding Central Environmental Authority (CEA) production limits.<sup>56</sup> Since 2010, villagers faced health concerns due to water testing showing 95% of wells below 5pH, some below 3pH, and high nitrate levels. The conflict was triggered by rubber production factory industrial operation in residential areas, exceeding CEA production license limits.<sup>57</sup>

In 2013, crowd road blockages led to three deaths and injuries, with the Sri Lankan government using military forces to maintain order.<sup>58</sup> The Appeals Court instructed CEA to submit investigation reports on subsurface

<sup>50</sup> DSG Viraj Dayaratne, "'Public Trust Doctrine Developed by the Supreme Court of Sri Lanka", Attorney General's Law Journal, 2015 (Volume I), Sri Lanka, 257

<sup>51</sup>

<sup>52</sup> (2000) 3 SLR 243

<sup>53</sup> Dayaratne (n146), 259

<sup>54</sup> Dayaratne (n146), 259

<sup>55</sup> C.A. (Writ) Application No. 385 of 2013

<sup>56</sup> H. Hemamali Perera, "Conflict analysis: Case study of Weliveriya- Rathupaswala, Sri Lanka Water crisis", <<https://conflictstransformers.wordpress.com/2015/06/22/conflict-analysis/case-study-of-weliveriya-rathupaswala-sri-lanka-water-crisis/>> accessed 20 July 2023.

<sup>57</sup> ibid

<sup>58</sup> Jayantha Amarasinghe and Saman Kariyakarawana, 'Rathupaswala TV Narrations: An Analysis of Media Content' [2023] SSRN Electronic Journal 5 <<https://www.ssrn.com/abstract=4349788>> accessed 20 July 2023.

water in Rathupaswala region and closed the case after factory relocation, suggesting exploring other legal options to address drinking water quality.<sup>59</sup>

### Comparative Analysis with Other Jurisdictions

In India, the Supreme Court expanded Article 21 to "life, health, and ecology," construing the right to life and personal liberty to include healthy environment rights, including clean water and air, to enjoy life fully.<sup>60</sup> *Maneka Gandhi v Union of India* significantly broadened Article 21's meaning, deciding the right to life encompasses more than physical rights, including the right to live with human dignity.<sup>61</sup>

In Pakistan, Articles 9 and 14 of the Constitution guarantee life rights and human dignity inviolability.<sup>62</sup> Pakistan's Supreme Court recognized these articles as encompassing environmental rights and affirmed government obligation to safeguard life, including avoiding environmental risks and pollution.

Section 24(b) of the South African Constitution states everyone has the right to environmental protection for current and future generations through appropriate legislative and other means.<sup>64</sup> This fundamental right exemplifies implicit PTD, requiring the South African government to safeguard the environment without explicitly designating it as PTD.

### State Responsibility in Environmental Regulation

The government's obligation to defend against commercial abuses in Sri Lanka is crucial. National laws implement measures preventing business abuses. The Constitution, as part of State Policy and Fundamental Responsibility, places environmental responsibility on state and individuals.<sup>63</sup> Although it doesn't include life rights or clean environment rights, the Supreme Court has used equality and equal protection rights to address environmental concerns.

Violating the Constitution, Company Act, or National Environment Act (NEA) is considered criminal offense potentially resulting in imprisonment.<sup>64</sup> In cases where environmental issues cause obstruction or nuisance, Magistrates can issue conditional orders preventing harm. Section 261 of the Criminal Procedure Code covers these offenses and is commonly used in lower courts addressing public nuisances and environmental contamination.<sup>65</sup>

To achieve environmental legislation goals, regulatory authorities including rulemaking, standard-setting, and enforcement capabilities may be transferred to administrative bodies. The CEA has significant authority under NEA, including granting or rejecting permits and licenses for activities that may impact the environment.<sup>66</sup>

### Environmental Protection Licensing

The government of Sri Lanka must enforce laws and grant licenses to companies while monitoring and mitigating negative environmental impacts.<sup>67</sup> Sri Lanka's government must uphold non-discrimination obligations and ensure equal treatment while guaranteeing access to essential resources.

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<sup>59</sup> "Court Instructs Environment Authority to Submit Inquiry Report on Rathupaswala" *December 2015* < <https://www.news.lk/news/business/item/11107-court-instructs-environment-authority-to-submit-inquiry-report-on-rathupaswala> > accessed 20 July 2023

<sup>60</sup> W.G.T.Y Thilakarathne, "Right to Life as a Fundamental Right; a Legal Analysis

On Sri Lankan Constitution", Proceeding of the International Open University Research Sessions (iOURS 2022), ISSN 2012-9912,4 < file:///C:/Dissertation/ID\_182\_RIGHT-TO-LIFE-AS-A-FUNDAMENTAL-RIGHT-A-LEGAL-ANALYSIS.pdf > accessed 21 July 2023.

<sup>61</sup> 1978 SC 597.

<sup>62</sup> Constitution of the Islamic Republic of Pakistan 1973.

<sup>63</sup> Environmental Foundation (Colombo, Sri Lanka) and Siemenpuu Foundation (Helsinki, Finland) (n 7) 26.

<sup>64</sup> The National Environment Act No. 47 of 1980 (as amended). The NEA is discussed in depth in Chapter 3. S 31

<sup>65</sup> Environmental Foundation (Colombo, Sri Lanka) and Siemenpuu Foundation (Helsinki, Finland) (n 9) 27.

<sup>66</sup> *Rajasingham* (n 181) 9

<sup>67</sup> UNGPs (n10),6



The state regulates business activities through NEA, addressing environmental issues. The Central Environmental Authority enforces the Act, focusing on environmental protection, quality, and assessment.<sup>68</sup> Part IVA regulates waste discharge, deposit, and emission from permitted activities, ensuring standards compliance. The Minister determines if 'prescribed activities' require environmental protection licenses.

The CEA's policy of renewing Environmental Protection Licenses (EPLs) based on company reports represents regulatory failure, causing abuse, pollution, and rights interference. The 'Rathupaswala case' highlights the need for inspection based on residents' complaints to address deficiencies before renewal, preventing water pollution.

### **Constitutional Gaps and Judicial Activism**

The question arises when corporations breach human rights because their economic operations encroach on humans' right to life. Domestic legislation must include mechanisms defending the right to life and introduce recourse mechanisms to citizens through the Constitution because it is the only location where fundamental rights are recognized.

The Sri Lankan Constitution guarantees few fundamental rights, but the judiciary can interpret them widely. The government's delay in recognizing right-to-life provisions raises questions about its commitment. It is critical to discuss human rights, particularly the right to healthy environment, which should be incorporated into the Constitution like other South Asian countries. The Public Trust Doctrine emphasizes this need.

### **Challenges and Limitations**

The current situation in Sri Lanka is deeply concerning, as the nation finds itself on the precipice of severe decline. The country's financial situation is dire, with bankruptcy looming ominously. Moreover, pervasive corruption within various sectors has reached alarming levels.<sup>79</sup>

It is disheartening that a significant portion of Sri Lankans view human rights as mockery, with power-seeking individuals intentionally instigating conflicts to maintain authority. This raises questions about ultimate guardians of human rights, as they cannot be guaranteed universally. State responsibility should be regulated through more legitimate and accountable mechanisms, making it mandatory that Sri Lanka meet international aspirations for human rights.

The minimal legal protection currently existing needs comprehensive utilization to eliminate harm done to environment, which endangers people's lives through business conduct. A significant cause of failure in Sri Lanka comes from corrupted state agencies, making it convenient for large corporations with money and power to ignore due diligence and corporate responsibility for maximizing profits.

### **Future Directions and Implementation**

Not only the State but other responsible communities, non-state actors, and civil societies must make serious efforts to realize business human rights within society. Any implementation of laws promoting business human rights must increase awareness among all sectors. Thus, it could be achieved as a country to protect today and future generations.<sup>84</sup>

UNGPs rights standards can only be truly effective in an environment where corruption is reduced, human rights due diligence is practiced, and a sustainable development legislative framework is in place. Civil society must play an important role for this analysis to be helpful. Subsequent anti-corruption reforms need to ensure that the government follows its own rules and holds corrupt officials and private businesspeople accountable, including for past misconduct.

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<sup>68</sup> ICESCR (n179) Art 2(1)

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## CONCLUSION

In conclusion, Sri Lanka should pay more attention to putting international agreements into action on Business and Human Rights by revising present legislation to protect people's fundamental rights, particularly the right to life, when businesses violate human rights. The State's responsibility in regulating business corporations for human rights violations requires comprehensive legal framework incorporating international standards, effective enforcement mechanisms, and robust judicial activism.

The dissertation advocates for enhanced transparency and restructuring institutions and security industries while addressing environmental challenges like pollution and soil and water contamination. Companies ignoring restrictions violate environmental concerns and rights of domestic workers seeking overseas employment.

The Sri Lankan government should pay greater attention to and act to incorporate Business and Human Rights ideas by changing current legislation to protect residents from infringement of their rights by enterprises that should be protected under constitutional law. This requires establishing a more comprehensive legal framework that bridges the gap between international human rights standards and domestic implementation, ensuring that both state and corporate actors are held accountable for protecting and respecting human rights in all business operations.

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